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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION**

THE CHARLES SCHWAB CORPORATION,
et al.,

Plaintiffs,

v.

BANK OF AMERICA CORPORATION, *et al.*,

Defendants.

Case No. CV 13-2244 PJH

**PLAINTIFFS' OPPOSITION TO
DEFENDANTS' NOTICE
REGARDING RELATED CASE**

The Honorable Phyllis J. Hamilton
Courtroom 3, 3rd Floor

Civil Local Rule 3-13(a) provides that whenever a party knows or learns that an action filed or removed to this District “involves all or a material part of the same subject matter and all or substantially all of the same parties as another action which is pending in any other federal or state court,” the party “must promptly file with the Court in the action pending before this Court and serve all opposing parties in the action pending before this Court with a Notice of Pendency of Other Action or Proceeding.” Defendants’ Notice of Removal filed in this case on May 16, 2013 includes a “Notice Regarding Related Case,” in which Defendants contend that this action “is related to a series of previously filed lawsuits that were consolidated by the Judicial Panel on Multidistrict Litigation in a proceeding before Judge Naomi Reice Buchwald of the United States District Court for the Southern District of New York.” Notice of Removal, Dkt. No. 1, at 12.

Defendants further state:

Plaintiffs’ claims here—which allege that an improper suppression of U.S. Dollar LIBOR resulted in depressed payments under financial instruments—are substantially similar to claims based on the same factual allegations that have been asserted against the same defendants in the cases that are part of the MDL before Judge Buchwald. Indeed, Plaintiffs’ original actions were before the MDL and contained federal causes of action that were dismissed by Judge Buchwald on March 29, 2013. Defendants intend to request that this Action be transferred to Judge Buchwald as a ‘tag along’ case related to the existing MDL in the Southern District of New York.

Id. The thrust of Defendants’ Notice, then, is that Plaintiffs’ claims in this case are substantively similar to those in pending multidistrict proceedings before Judge Buchwald in the Southern District of New York, *In re LIBOR-Based Financial Instruments Antitrust Litigation*, No. 11 MD 2262 (NRB) (the “*LIBOR MDL*”) and Defendants “intend to request” that this case be transferred to the *LIBOR MDL* as a “tag along” action.

As an initial matter, it is unclear whether Defendants intend their “Notice Regarding Related Case” to constitute a Notice of Pendency of Other Action or Proceeding, in accordance with Rule 3-13. In an abundance of caution, Plaintiffs submit this opposition under Rule 3-13. *See* Civil L.R. 3-13(c) (“No later than 14 days after service of a Notice of Pendency of Other Action, any party may file with the Court a statement supporting or opposing the notice.”).

With respect to the substance of Defendants’ Notice, while Plaintiffs do not dispute that

1 Plaintiffs' claims in this case arise from the same factual allegations as claims by these same
 2 Plaintiffs, and certain other plaintiffs, in the *LIBOR MDL*, Plaintiffs respectfully request that this
 3 Court refrain from issuing any order regarding whether this case is related to cases pending in the
 4 *LIBOR MDL* or whether this case should be transferred to the *LIBOR MDL*, in light of
 5 (1) Plaintiffs' pending Administrative Motion to Consider Whether Cases Should be Related,
 6 filed in *Schwab Money Market Fund, et al. v. Bank of America Corp., et al.*, Case No. CV 11-
 7 4186 MEJ (N.D. Cal.), on May 30, 2013 (the "Motion to Relate Cases"); and (2) Plaintiffs'
 8 forthcoming motion to remand this case back to California state court.

9 As detailed in the Motion to Relate Cases—which is attached, for this Court's
 10 convenience, as Exhibit A to the accompanying Declaration of Eric B. Fastiff—this case is
 11 related to three LIBOR-related actions filed by these Plaintiffs in this District in August 2011:

- 12 • *Schwab Money Market Fund, et al. v. Bank of America Corp., et al.*, No. CV 11-
 13 4186 MEJ (N.D. Cal.) (the "Schwab Money Market Fund Action");
- 14 • *Charles Schwab Bank, N.A., et al. v. Bank of America Corp., et al.*, No. CV 11-
 15 4187 MEJ (N.D. Cal.) (the "Schwab Bank Action"); and
- 16 • *Schwab Short-Term Bond Market Fund, et al. v. Bank of America Corp., et al.*,
 17 No. CV 11-4271 MEJ (N.D. Cal.) (the "Schwab Bond Fund Action").

18 Having initially been assigned to the Honorable Elizabeth Laporte (the Schwab Money
 19 Market Fund Action and the Schwab Bank Action) and to the Honorable Donna Ryu (the Schwab
 20 Bond Fund Action), those cases (referred to collectively as the "Preceding Schwab Federal
 21 Actions") were reassigned to the Honorable Maria-Elena James. *See* Related Case Order dated
 22 September 13, 2011, Dkt. No. 21 in the Schwab Money Market Fund Action. The Preceding
 23 Schwab Federal Actions were later transferred under 28 U.S.C. § 1407 to the *LIBOR MDL* "for
 24 coordinated or consolidated pretrial proceedings." *In re LIBOR-Based Fin. Instruments Antitrust*
 25 *Litig.*, MDL No. 2262, 2011 U.S. Dist. LEXIS 106128, at *1 (J.P.M.L. Sept. 14, 2011).

26 In light of that procedural history, and given that the claims in this case arise from the
 27 same factual allegations as the claims in the Preceding Schwab Federal Actions, Plaintiffs
 28 recently filed an Administrative Motion to Consider Whether Cases Should be Related, in

1 accordance with Civil Local Rule 3-12. By that motion, Plaintiffs request that this case be
 2 deemed related to the Preceding Schwab Federal Actions and assigned to Magistrate Judge
 3 James.

4 Plaintiffs also will file shortly a motion to remand this case back to California state court.
 5 Plaintiffs will argue that because federal subject-matter jurisdiction does not exist over the claims
 6 in this case—which Plaintiffs filed in California Superior Court in San Francisco after Judge
 7 Buchwald in the *LIBOR MDL* declined to exercise supplemental jurisdiction over them pursuant
 8 to 28 U.S.C. § 1367—remand is warranted.

9 Accordingly, Plaintiffs respectfully request that, pending resolution of Plaintiffs' Motion
 10 to Relate Cases and their forthcoming motion to remand this case to California state court, this
 11 Court refrain from issuing any order regarding whether this case is related to cases pending in the
 12 *LIBOR MDL* or whether this case should be transferred to the *LIBOR MDL*.

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 14 Dated: May 30, 2013

Respectfully submitted,

15 LIEFF, CABRASER, HEIMANN & BERNSTEIN, LLP

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 17 By: /s/ Eric B. Fastiff
 18 Eric B. Fastiff

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